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Shelley P.M. Fussey

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
David Price	§	Group Art Unit: 1652
	§	
Serial No.: 08/951,188	§	Examiner: Tung, P.
	§	
Filed: October 15, 1997	§	Atty. Dkt. No.: 4200.000200
	§	
For: P-TEFb COMPOSITIONS,	§	Former Dkt.: IOWA:012
METHODS AND	§	
SCREENING ASSAYS	§	

**APPLICANTS' INTERVIEW SUMMARY AND
CONFIRMATION THAT APPLICATION REMAINS PENDING**

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

The present document constitutes Applicant's summary of prosecution events, particularly Applicant's Interview Summary Record for a telephone interview held November 30, 2000, and confirms that a response from the Applicant is not necessary to maintain the application as pending.

The prosecution history of the present application during 2000 is as follows. A prematurely final Official Action was mailed January 04, 2000. The finality of the Action was improper as the Action entered two new grounds of rejection, based on two newly-cited prior art documents, which were not necessitated by Applicant's amendment. Applicant timely filed a

detailed request to withdraw the holding of finality under MPEP 706.07(d) on January 28, 2000, within one month of the date of the Action.

Throughout the following months, Applicant's representatives diligently and repeatedly contacted the Office to determine the status of the request to withdraw finality. According to Applicant's representatives' timekeeping records, substantive discussions were held with the Office at least on March 15, March 21, March 22, April 04, April 10, May 10, May 17, May 18, May 31, June 08, June 13, June 14, June 23, June 28, July 17, July 18, July 27, August 15, August 16 and August 17, 2000. During such teleconferences, Applicant's representatives spoke to Examiner Tung and SPE Achutamurthy, as well as to various officials in the group art unit.

Applicant's representatives were repeatedly advised by Examiner Tung that the Applicant need not file a response to the outstanding Action, that finality would be withdraw, the Office Action vacated and that another Action would be issued by the Office. Most notably, on March 22, 2000 and June 28, just before the three and six month response dates, respectively, Examiner Tung assured Applicant's representatives that the Applicant need take no action; that finality would be vacated; that the Office would issue another Action, restarting the period for response to run from the mailing date of the new Action; that the Examiner would make a note of this in the Office records and that the Applicant need not submit comments in writing. Applicant's representatives have a specific recollection of this, given that the six month response date was scheduled to fall on July 04, 2000, a national holiday.

In accordance with the foregoing assurances from Examiner Tung, the application was maintained as pending and another Action (the fourth) was subsequently mailed on October 11, 2000. The mailing of the fourth Action by the Office clearly shows that the Office identified the application as pending. There is nothing in the events to date to suggest that the Office held the application to be abandoned.

Despite clearly stating that finality had been vacated, and without affording the Applicant an opportunity to respond, the fourth Action was inexplicably made final. Upon receipt of the fourth and still prematurely final Action, Applicant's representatives filed a petition to the Group Director under 37 C.F.R. § 1.181 and MPEP 706.07(d) & 1002.02(c), requesting that finality be withdrawn and that the period for response be restarted to run from the date of a new, non-final Action. The petition was timely submitted within one month of the date of the fourth Action.

On November 30, 2000, Robert Hill of the Office telephoned Applicant's undersigned representative, Shelley Fussey, to discuss the petition. Mr. Hill advised that although Applicant's position was correct, and a non-final Action with a new response period would ordinarily be mailed, such action could not be taken in this case as the application could potentially be held to be abandoned for failing to respond to the third Action by July 04, 2000. Dr. Fussey advised Mr. Hill that the Applicant had been repeatedly advised not to respond to the third Action, and that Applicant's lack of written response was entirely at the direction of the Office. Dr. Fussey also stated that the subsequent mailing of the fourth Action clearly evidenced the fact that the Office had maintained the application as pending, according to the earlier assurances made to the Applicant.

Mr. Hill responded that he could not locate any notation in the file that the Office had vacated the third Action and that he would consult the group art unit again, specifically Examiner Tung, regarding such a notation. Whilst Applicant's representative agreed that further discussion with the working examiner should prove beneficial, Applicant maintains that the subsequent mailing of the fourth Action clearly evidences the fact that the application was pending. Clearly, Official Actions on the merits are only mailed in connection with pending applications.

In conclusion, Mr. Hill advised that he would consult with the group art unit and that someone from the Office would then contact the Applicant's representatives again. Applicant's representative was again specifically advised not to take any action until contacted by the Office.

Given that it is almost six months since the Fourth Action was mailed, and Applicant is still, as directed by the Office, waiting for contact from the Office, the present document is being submitted in an abundance of caution to confirm that the Applicant was instructed not to respond to the Fourth Action and, therefore, that the present application remains pending.

It will be noted that throughout this entire process of communications with the Office, the Applicant has repeatedly been instructed not to file a response, nor to pay any extension fees, but simply to await further communications from the Office. Applicant has therefore acted as instructed throughout. As stated above, Applicant's representatives have also maintained a record of the instructions from the Office throughout this process.

According to other communications of record, Applicant is still also awaiting a refund of funds improperly deducted from Applicant's representatives' deposit account in regard to this application. Refund of such monies is respectfully requested, along with the fee for the petition to withdraw finality, which was necessitated by procedural errors on the part of the Office.

Please date-stamp and return the enclosed postcard to acknowledge receipt of these materials.

Respectfully submitted,



Shelley P.M. Fussey
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Agent for Applicants

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